

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**BRIDGEWATER COLLEGE**

**VWP General Permit WP4-03-1408**

**SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Bridgewater College to resolve certain alleged violations of environmental laws and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the DEQ.
5. "DEQ-VRO" means the Valley Regional Office of the DEQ.
6. "The Project" means the Bridgewater College New Student Housing Construction Project.
7. "VWP Regulation" means the Virginia Water Protection Regulation, 9 VAC 25-210-10 *et seq.*
8. "Order" means this document, also known as a Consent Special Order.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Bridgewater College is a private college located in Bridgewater, Virginia.
2. On July 15, 2003, DEQ issued coverage to Bridgewater College under VWP General Permit WP4-03-1408 ("the Permit"). The Permit authorizes the impact of 550 feet of linear emergent wetland that is approximately 12 feet wide (0.15 acre). The authorized impacts are associated with construction of the Project. The Permit required mitigation of the impacts through the purchase of 0.15 credit from the Shenandoah Wetlands Bank, LLC.
3. In late July, 2003, Bridgewater College commenced construction activities at the Project.
4. On August 8, 2003, DEQ staff performed an inspection of the Project to evaluate compliance with the Permit. Staff observed that construction activities have impacted areas beyond the scope of those areas authorized for impact under the Permit in alleged violation of the Permit. Specifically, staff observed that construction activities were impacting additional wetland by removing vegetation, excavating within the wetland, regrading the wetland area and backfilling the wetland with upland fill. Staff also observed that a french drain capable of permanently dewatering the wetland system was being constructed within the wetland.
5. On August 21, 2003, DEQ issued Notice of Violation No. W2003-08-V-9001 ("NOV") to Bridgewater College citing the following alleged violations of State Water Control Law, the Permit and the VWP Regulation:
  - a. Unpermitted discharge into state waters of deleterious substances in alleged violation of Va. Code § 62.1-44.5.A(i);
  - b. Except in compliance with a VWP permit, dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands or conduct the following activities in a wetland: (1) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions; (2) filling or dumping; (3) permanent flooding or impounding; or, (4) new activities that cause significant alteration or degradation of

- existing wetland acreage or functions in alleged violation of 9 VAC 25-210-50.A of the VWP Regulation;
- c. Failure to provide a notice of planned change in accordance with 9 VAC 25-690-80 or to submit another VWP Permit application for additional impacts to surface waters associated with the Project in alleged violation of Part I.A.2 and Part III.A of the Permit and 9 VAC 25-210-90.A of the VWP Permit Regulation; and,
  - d. Failure to notify DEQ in writing by certified letter at least 10 days prior to the start of construction activities authorized by the Permit in alleged violation of Part II.E.2 and Part III.A of the Permit and 9 VAC 25-210-90.A of the VWP Permit Regulation.
- 6. On August 14, 2003, staff of DEQ, Bridgewater College and contractors for Bridgewater College met in an informal enforcement conference. During the meeting, DEQ staff explained the options for mitigation available to Bridgewater College.
  - 7. On September 10, 2003, staff of DEQ determined that the unauthorized activities had resulted in the impact of an additional 0.30 acre of wetland.
  - 8. The Order requires Bridgewater College to compensate for the additional impacts through the purchase of additional credits from the Shenandoah Wetlands Bank, LLC. The Order also provides for the assessment of a civil charge in settlement of the alleged violations noted in the NOV. DEQ acknowledges that a third party working for Bridgewater College on the Project is largely responsible for the alleged violations cited in the NOV.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Bridgewater College, and Bridgewater College agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Bridgewater College, and Bridgewater College voluntarily agrees, to pay a civil charge of **\$ 5,850** within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Bridgewater College shall include its Federal Identification Number with the civil charge payment and shall note on the check that payment is being made pursuant to this Order.

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Bridgewater College, for good cause shown by Bridgewater College, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations addressed in NOV No. W2003-08-V-9001, including those alleged violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered alleged violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order only, Bridgewater College admits the jurisdictional allegations in the Order. By entering into this Order, Bridgewater College does not admit the factual allegations or legal conclusions contained herein for this or any subsequent proceeding.
4. Bridgewater College consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Bridgewater College declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waives its right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver by Bridgewater College of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Bridgewater College to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such alleged violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Bridgewater College shall be responsible for failure to comply with any of the terms and

conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Bridgewater College shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bridgewater College shall notify the Regional Director of the VRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director of the VRO within 24 hours of learning of any condition above, which Bridgewater College intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Bridgewater College. Notwithstanding the foregoing, Bridgewater College agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Bridgewater College. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bridgewater College from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signatures below, Bridgewater College voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Bridgewater College voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Bridgewater College, on behalf of Bridgewater College.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

**BRIDGEWATER COLLEGE**

1. **By April 26, 2004**, Bridgewater College shall purchase **0.75 credit** from the Shenandoah Wetlands Bank, LLC.
2. **By May 14, 2004**, Bridgewater College shall provide to DEQ's Valley Regional Office a copy of the check used for the purchase of 0.75 credit from the Shenandoah Wetlands Bank, LLC.